

In the Matter of Licenses No. A-69825 and all other Licenses,
Certificates and Documents

Issued to: ROBERT D. WILLIAMS

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

976

ROBERT D. WILLIAMS

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations Sec. 137.11-1.

By order dated 24 January 1957, an Examiner of the United States Coast guard at Corpus Christi, Texas, suspended Appellant's License A-69825 upon finding him guilty of misconduct based upon a specification alleging in substance that while serving as motorboat operator under authority of the license above described, on or about 8 August 1956, while said vessel was at sea in the Gulf of Mexico, he did wrongfully use abusive language and cursed at passengers aboard his vessel, HARBOR LIGHT NO. 3, the passengers being J. D. McLemore and his wife and another man and his wife.

At the hearing, Appellant was given a full explanation of the nature of the proceedings, the rights to which he was entitled and the possible results of the hearing. Although advised of his right to be represented by counsel of his own choice, appellant voluntarily elected to waive that right and act as his own counsel at the time of entering his plea but was represented by counsel of his own choice at all subsequent sessions. He entered a plea of "not guilty" to the charge and each specification proffered against him.

The Investigating Officer made his opening statement. The Investigating Officer called as witnesses for the Government, Mr. and Mrs. J. D. McLemore and Mr. and Mrs. A. H. Thompson. Appellant testified in his own behalf and also called his son, Robert E. Williams, to testify. In addition, Appellant called several character witnesses and introduced a number of letters from satisfied customers as well as photographs of the motorboat HARBOR LIGHT NO.3 (Defendant's Exhibits 1, 2, 3, and 4).

The Hearing Examiner introduced three letters (Examiner's Exhibits 1, 2, and 3) for the purpose of showing why testimony was taken in Oklahoma City.

At the conclusion of the hearing, having heard the arguments of the Investigating Officer and Appellant's counsel and given both parties an opportunity to submit proposed findings and conclusions, the Examiner announced his decision and concluded that the charge had been proved and one specification had been proved in part. Two other specifications were found not proved. He then entered the order suspending Appellant's License A-69825 and all other licenses and documents issued to Appellant by the United States Coast Guard or its predecessor authority for a period of six (6) months. The suspension ordered was not to be effective provided no charge under R.S. 4450, as amended (46 U.S.C. 239) was proven against the Appellant for acts committed within twelve months from the date of service of the decision.

Based upon my examination of the record submitted, I hereby make the following

FINDINGS OF FACT

On 8 August 1956, Appellant was motorboat operator on board the motorboat HARBOR LIGHT NO. 3 acting under authority of his License No. A-69825.

The Appellant owns and operates a charter boat service at Port Isabel, Texas consisting of three motorboats, HARBOR LIGHT NO. 2, HARBOR LIGHT NO. 3, and SNAPPER. He is an experienced charter boat operator and has been doing business in the Port Isabel area since 1949.

On 7 August 1956, Mr. J. D. McLemore, Mrs. J. D. McLemore, Mr. A. H. Thompson and Mrs. A. H. Thompson, all residents of Oklahoma City, Oklahoma, made arrangements with the Appellant to charter one of his motorboats for an all day (approximately 12 hours) fishing trip the following day. At approximately 0600 on 8 August 1956, the above mentioned fishing party left Port Isabel on board the motorboat HARBOR LIGHT NO. 3 with the Appellant in charge and his son, Robert E. Williams, a boy of 15, as a deck hand.

While under way in the Gulf of Mexico, the Appellant received a radio message from another one of his motorboats to the effect that a fishing party which had engaged the other motorboat had not appeared. The receipt of this news was upsetting to the Appellant and he made the remark that it had cost him \$200. One of the Government witnesses, Mr. J. D. McLemore testified that the Appellant stated "It's god-damn funny that people will rent your boat and not show up to use it."

Shortly after the incident referred to above, the son of the Appellant dropped some bottles of Coco-Cola and broke one. The

Appellant reprimanded his son strongly. According to Mrs. McLemore, the Appellant swore at the boy.

While fishing for king mackerel, Mr. A. H. Thompson hooked one and reeled it into the boat. The Appellant reached over the side of the boat to gaff the fish when the fish gave a lunge, breaking the pole Mr. Thompson was using. The Appellant said, "Throw it overboard, it's ruined." Why don't you hold that pole up?" and "that's no damn way to handle a rod."

At other times, according to Mr. McLemore, the Appellant stated "don't hold the god-damn pole on the boat," and when winding a fish in, "wind the go-damn thing in." None of the other witnesses testified to such incidents.

While fishing for red snappers, Mr. McLemore, who had been resting in a bunk below, came up on deck and asked the Appellant's son to bait his hook. The Appellant said to his son: "Don't bait his hook" and "Let him bait his own damn hook." At this point, Mrs. McLemore told the Appellant that Mr. McLemore was crippled and the Appellant, while walking away from the cockpit towards the wheel stated: "He's got no go-damn business being on this fishing boat."

The Appellant denied cursing anyone on the trip but did say that he had used profane language as an "exclamation." He also testified that he resented Mr. McLemore's "demanding attitude" and his giving of orders to the Appellant's son. While fishing, the Appellant and his son did bait the hooks and remove the fish from the hooks of Mrs. McLemore and Mrs. Thompson as an "accommodation" to the ladies.

Appellant is Captain of Division 7 of the Coast Guard Auxiliary and is chairman of the Flotilla's Sea Scout Committee. He has no prior disciplinary record in connection with his license.

BASIS OF APPEAL

This appeal has been taken from the order imposed by the Examiner. Appellant contends that the Examiner erred in finding that the Appellant did "wrongfully use abusive language at and curse Mr. J. D. McLemore." Other grounds, based on the weight to be placed on certain testimony, were advanced. In addition, the Appellant contends that R.S. 4450 (46 U.S.C. 239) is unconstitutional and in violation of the Fifth and Fourteenth Amendments of the Constitution because of alleged indefiniteness and uncertainty of, and the lack of standards concerning the words "misconduct" and "misbehavior" in said statute.

APPEARANCES: Bascom Cox, Esq. and Clyde H. Hale, Esq. for Robert D. Williams, the person charged. Duke Duval, Esq. for Mr. and Mrs. J. D. McLemore.

OPINION

The Examiner found in substance that on 8 August, 1956, the Appellant, while serving as a duly licensed Motorboat Operator on board the motorboat, HARBOR LIGHT NO. 3, wrongfully used abusive language at and cursed Mr. J. D. McLemore. That finding is not supported by substantive evidence.

From the testimony of the Government witnesses and of the Appellant himself, it was established that the Appellant did use profanity on 8 August 1957 during the time he, as operator of the motorboat, HARBOR LIGHT NO. 3, had Mr. J. D. McLemore on board as a passenger for hire. However, there is no evidence that the Appellant cursed at or wrongfully used abusive language directed toward Mr. McLemore as an individual.

Appellant did use profane (but no obscene) language in the presence of his passengers, two of whom were ladies, but he was not charged with this objectional conduct.

This opinion is not to be construed as condoning the conduct of the Appellant. On the contrary, such manifestation of irritation and use of profanity in the presence of passengers as brought out in this case are expressly condemned.

In addition to a motorboat operator's responsibility for the safety of his passengers, he is also charged, as a duly licensed motorboat operator, to treat his passengers with courtesy and respect at all times and to provide for their welfare.

Since the Examiner is being reversed on the first ground of appeal, the several other grounds advanced need no discussion.

ORDER

The order of the Examiner at Corpus Christi, Texas, dated 24 January 1957 is VACATED. The charge of misconduct and the specification are DISMISSED.

A. C. Richmond
Vice Admiral United States Coast Guard
Commandant

Dated at Washington, D. C., this 30th day of July, 1957.